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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 83, Original

STATE OF MARYLAND,
STATE OF ILLINOIS,
STATE OF INDIANA,
COMMONWEALTH OF MASSACHUSETTS,
STATE OF MICHIGAN,
STATE OF NEW YORK,
STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS,
STATE OF WISCONSIN,

Plaintiffs,

v.

STATE OF LOUISIANA,

Defendant.

MOTION OF

COLUMBIA GAS TRANSMISSION CORPORATION,
CONSOLIDATED GAS SUPPLY CORPORATION,
EL PASO NATURAL GAS COMPANY,
FLORIDA GAS TRANSMISSION COMPANY,
MICHIGAN WISCONSIN PIPE LINE COMPANY,

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MISSISSIPPI RIVER TRANSMISSION CORPORATION,
NATURAL GAS PIPELINE COMPANY OF AMERICA,
NORTHERN NATURAL GAS COMPANY,
PANHANDLE EASTERN PIPE LINE COMPANY,
SEA ROBIN PIPELINE COMPANY,
SOUTHERN NATURAL GAS COMPANY,
TENNESSEE GAS PIPELINE COMPANY
(a Division of Tenneco Inc.),
TEXAS EASTERN TRANSMISSION CORPORATION,
TEXAS GAS TRANSMISSION CORPORATION,
TRANSCONTINENTAL GAS PIPE LINE CORPORATION,
TRUNKLINE GAS COMPANY, and
UNITED GAS PIPE LINE COMPANY

FOR LEAVE TO INTERVENE AS PLAINTIFFS AND TO FILE COMPLAINT, BRIEF IN SUPPORT OF MOTION AND COMPLAINT OF INTERVENORS

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TRUNKLINE GAS COMPANY, and
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FOR LEAVE TO INTERVENE AS PLAINTIFFS
AND TO FILE COMPLAINT

Columbia Gas Transmission Corporation, Consolidated Gas Supply Corporation, El Paso Natural Gas Company, Florida Gas Transmission Company, Michigan Wisconsin Pipe Line Company, Mississippi River Transmission Corporation, Natural Gas Pipeline Company of America, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, Sea Robin Pipeline Company, Southern Natural Gas Company, Tennessee Gas Pipeline Company (a Division of Tenneco Inc.), Texas Eastern Transmission Corporation, Texas Gas Transmission Corporation, Transcontinental Gas Pipe Line Corporation, Trunkline Gas Company, and United Gas Pipe Line Company [hereinafter "the pipeline companies"], by their undersigned attorneys, respectfully move the Court

(i) for leave to intervene as plaintiffs in this action pursuant to Rule 9(2) of the Court and the policy considerations underlying Rule 24 of the Federal Rules of Civil Procedure, and (ii) for leave to file a complaint to assert and protect their interests.

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TRUNKLINE GAS COMPANY, and
UNITED GAS PIPE LINE COMPANY

IN SUPPORT OF MOTION

STATEMENT OF THE CASE

The States of Maryland, Illinois, Indiana, Massachusetts, Michigan, New York, Rhode Island and Wisconsin [hereinafter "plaintiffs"] have invoked the original jurisdiction of this Court in order to challenge the constitutionality of the Louisiana First Use Tax on Natural Gas, La. R.S. 47:1301-07 [hereinafter "First Use Tax"].[1] Plaintiffs pray, *inter alia*, for a judgment declaring the First Use Tax unconstitutional and for both preliminary and permanent injunctions prohibiting collection of the tax.

[1]The text of the First Use Tax is contained in Appendix C, *infra*, pages A-6—A-12.

The pipeline companies seeking to intervene are natural gas companies as defined in Section 2 of the Natural Gas Act, 15 U.S.C. 717 *et seq.*, and are regulated by the Federal Energy Regulatory Commission [hereinafter "FERC"] and, as to certain aspects of their business transactions, by state agencies.

The pipeline companies acquire natural gas produced from the outer continental shelf (a federal domain beyond the territorial boundaries of the State of Louisiana, defined and delineated in the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*) and from onshore federal enclaves lying within the boundaries of the State of Louisiana. The gas so acquired is natural gas upon which no severance tax or other tax upon the volume of production has been paid (or is legally due to be paid) to any state or territory of the United States, and upon which no import tax or tariff is imposed by the United States. The gas [hereinafter "said gas"] is thus deemed subject to the First Use Tax. La. R.S. 47:1303A.

The pipeline companies transport said gas through their own pipeline systems or have it transported through the pipeline systems of others into or through the State of Louisiana, in various streams in interstate commerce, for sale for resale under rate schedules or tariffs approved by and on file with FERC, to gas distribution companies, municipalities, and other pipelines, and/or for direct sale to other customers, all under certificates of public convenience and necessity issued by FERC. At all times when said gas is deemed to be subject to the First Use Tax it is traveling in interstate commerce.

Because the pipeline companies are the owners of said gas when the events defined as "uses" by the First Use Tax occur, they are legally responsible for paying the tax and complying with the reporting requirements of the First Use Tax statute. La. R.S. 47:1305.[2] The gas is subject to seizure and sale as contraband should they fail to do so. La. R.S. 47:1306B.

With the consent of the original parties, an *amici curiae* brief was filed by certain of the pipeline companies to apprise the Court of their vital and immediate interests in the outcome of this action, to support the plaintiffs' Motion For Leave To File Complaint, and to state the intention of the pipeline companies to intervene in the action upon the acceptance by this Court of jurisdiction. On June 18, 1979, the Court entered an order granting plaintiffs' Motion For Leave To File Complaint.

JURISDICTION

Original exclusive jurisdiction in this Court of the plaintiffs' action is established by article III, § 2, clauses 1 and 2 of the United States Constitution. Article III, § 2.

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[2]The pipeline companies are the taxpayers. Each has reported and made First Use Tax payments as required by La. R.S. 47:1305 for the months of April, May and June, 1979, and has filed suit for the recovery thereof, as well as for the recovery of all future First Use Taxes paid under protest, in the matter entitled Southern Natural Gas Co., *et al.* v. McNamara, *et al.*, No. 225-533 (19th Judicial District Court for the State of Louisiana, filed June 22, 1979).

clauses 1 and 2 of the United States Constitution also establish original jurisdiction in this Court of the Complaint of Intervenors herein.

REASONS FOR GRANTING INTERVENTION

While there is no express rule governing intervention in original actions in the Supreme Court, Rule 9(2) of this Court provides in part that ". . . the Federal Rules of Civil Procedure . . . where their application is appropriate, may be taken as a guide to original actions in this court." Rule 24 of the Federal Rules of Civil Procedure establishes the requirements for intervention in the District Courts.[3] As demonstrated below, the pipeline companies unquestionably satisfy the policy considerations underlying Rule 24 and thus should be permitted to intervene.

I. The Pipeline Companies Have Significantly Protectable Interests at Issue in This Case

The pipeline companies clearly have a "significantly protectable interest" in the matter at issue between the plaintiffs and the State of Louisiana. *See Donaldson v. United States*, 400 U.S. 517, 531 (1971). Considerations of justice and judicial economy require that they be allowed to intervene to protect that interest. Indeed, these are two of the principal reasons for permitting intervention, *viz*: "to foster economy of judicial administration and to protect nonparties from having their interests adversely affected by litigation conducted without their participation." *Stallworth v. Monsanto Co.*, 558 F.2d 257, 265 (5th Cir. 1977).

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[3]The text of Rule 24 is contained in Appendix E, *infra*, pages A-15—A-16.

The natural gas that the pipeline companies acquire from the outer continental shelf and onshore federal enclaves purportedly is made subject to the First Use Tax by La. R.S. 47:1303, which imposes a tax upon the first "use" of the gas within the State of Louisiana, as that term is defined in La. R.S. 47:1302(8). Since the pipeline companies are the owners of the natural gas at the time the gas is subjected to events defined as "uses" by the First Use Tax statute, they are responsible for payment of the tax. La. R.S. 47:1305B.

In addition to the proprietary interest in the taxes that they already have paid and will continue to pay under protest to the State of Louisiana, an estimated $275,000,000 in the first year alone, the pipeline companies have a proprietary interest as owners of the natural gas that is the subject of the tax. If the pipeline companies do not comply with the obligations imposed upon them by the First Use Tax statute, the natural gas owned by them is subject to seizure and sale as contraband. La. R.S. 47:1306B. Interests in property, such as these, are the most elementary type of right that intervention was designed to protect. *Diaz v. Southern Drilling Corp.*, 427 F.2d 1118, 1124 (5th Cir.), *cert. den. sub nom. Trefina v. United States*, 400 U.S. 878 (1970).

As the taxpayers, the pipeline companies are required to comply with the complex reporting and payment procedures established by the First Use Tax. If they do not comply timely with the requirements of the statute, under La. R.S. 47:1306A, the pipeline companies will be subject to the assessment of interest, penalties and costs as provided in La. R.S. 47:1601–06, and under certain circumstances, attorneys fees as provided in La. R.S. 47:1512. *See South Central Bell Telephone Co. v. Traigle*, 367 So.2d 1143 (La. 1979). Furthermore, the pipeline

companies are required to pay the tax under protest in order to preserve the right to an ultimate refund. La. R.S. 47:1576.[4]

Because the "legal incidence" of the tax is upon the pipeline companies, they have a judicially recognized interest in having the First Use Tax declared unconstitutional. *Arizona v. New Mexico*, 425 U.S. 794, 797–98 (1976).

While it is true that the pipeline companies, under orders issued by FERC,[5] are presently collecting most of the costs associated with the First Use Tax from their customers, subject to refund with interest, and subject to the outcome of litigation challenging the constitutionality of the tax, the FERC orders do not provide complete protection of the pipeline companies' interests. It also is true that the interim collection procedures adopted by FERC do not lessen the critical and primary interest of the

[4]The text of La. R.S. 47:1576 is contained in Appendix D, *infra*, pages A-13—A-14.

[5]*See* State of Louisiana First Use Tax in Pipeline Rate Cases, FERC Docket No. RM78-23, Order No. 10, 43 Fed. Reg. 45553 (Oct. 3, 1978); Order No. 10-A, 43 Fed. Reg. 60438 (Dec. 28, 1978); Order No. 10-B, 44 Fed. Reg. 13460 (March 12, 1979); "Order Directing The Solicitor To Seek Either An Order Of The Court Permitting the Commission To Modify Its Orders Or A Remand Of the Record" and Proposed Order No. 10-C, 44 Fed. Reg. 46291 (August 7, 1979); "Order Accepting Certain Tariff Sheets, Conditionally Accepting Certain Tariff Sheets, and Rejecting Certain Other Tariff Sheets Which Reflect the Louisiana First Use Tax," Arkansas Louisiana Gas Co., *et al.*, FERC Docket Nos. RP79-53, *et al.*, 44 Fed. Reg. 21330 (April 10, 1979). These orders have placed and will place the pipeline companies at risk and the lawfulness of the procedures prescribed by such orders is being challenged in the United States Court of Appeals for the Fifth Circuit in Tennessee Gas Pipe Line Co., *et al.* v. FERC, No. 78-3816.

pipeline companies in having the tax declared unconstitutional.[6]

First, although FERC regulates the rates of sales for resale (sales to distribution companies, pipelines and municipalities), the ability of the pipeline companies to collect the First Use Tax from their direct sale customers (sales to persons for their own use) is generally governed by contract rather than FERC orders and regulations. In some instances, direct sale contracts contain no tax reimbursement provisions, while in others only a percentage of tax increases will be borne by the direct sale consumer. Accordingly, some of the pipeline companies may be required to bear at least a portion of the First Use Tax, if it is held to be constitutional.

Second, the FERC orders permitting the pipeline companies to collect the First Use Tax from their jurisdictional customers, expose the pipeline companies to economic risk, even if the tax ultimately is declared to be unconstitutional. Under these orders, if they are to collect the tax from their customers, the pipeline companies must engage in a corporate undertaking procedure which would require the pipeline companies, in the event the tax is declared to be unconstitutional, to absorb the loss of any taxes paid to the State of Louisiana, and/or associated costs, which for any reason are unrecoverable from the

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[6]In Southern Pacific Company v. Darnell-Taenzer Lumber Company, 245 U.S. 531 (1918), the Court held that a shipper had a right to maintain a suit for reparations before the ICC even though he had passed on the excess costs completely to his customers. In Ute Indian Tribe v. State Tax Commission, 574 F.2d 1007 (10th Cir. 1978), the Tenth Circuit recognized the right of the plaintiffs to seek to enjoin an allegedly invalid sales tax even though they were required by the taxing statute to collect the entire amount of the tax from their customers.

state.[7] Thus, the pipeline companies have a vital stake in the outcome of these proceedings.

Finally, the pipeline companies are required under the FERC orders[8] to take all legal action necessary to enforce contract provisions which could require another contracting party to pay the tax. As the FERC orders recognize, some contracts between the pipeline companies and producers or processors of gas could require the reimbursement of the First Use Tax. However, the First Use Tax provides that these contract provisions are unenforceable, "unless there has been a final and unappealable judicial determination" to the contrary. La. R.S. 47:1303C. As the contracting parties, the pipeline companies are directly affected by this clause and clearly have a vital interest in challenging the constitutionality of La. R.S. 47:1303C. Moreover, because of the conflict between the Louisiana statute and the FERC orders, the pipeline companies may have to bear the full cost of the tax attributable to gas obtained under such contracts pending

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[7]*See* State of Louisiana First Use Tax in Pipeline Rate Cases, FERC Docket No. RM78-23, Order No. 10-B, at 7-8, 44 Fed. Reg. 13460, at 13461 (March 12, 1979); Order No. 10-C, at 20, 44 Fed. Reg. 46291 at 46293 (August 7, 1979).

[8]*Id.*, Order No. 10-B, at 8-10, 44 Fed. Reg. at 13461-62.

a determination of the enforceability of the provisions in separate legal proceedings.[9]

II. Intervention of the Pipeline Companies Is Appropriate to Permit Their Participation in the Resolution of Issues Directly Affecting Their Interests

This Court's decision regarding the constitutionality of the First Use Tax will directly affect the obligations of the pipelines under the First Use Tax, the FERC orders and the contracts between the pipeline companies and their customers and suppliers. Therefore, the pipeline companies should be allowed to speak for themselves regarding their interests. *See, e.g., Stallworth v. Monsanto Co.*, 558 F.2d 257 (5th Cir. 1977); *Nuesse v. Camp*, 385 F.2d 694 (D.C. Cir. 1967); *Atlantis Development Corp. v. United States*, 379 F.2d 818 (5th Cir. 1967); *Hartford Accident & Indemnity Co. v. Crider*, 58 F.R.D. 15 (N.D. Ill. 1973). It also is clear that the decision of this Court will have a dispositive effect on the constitutional issues affecting the pipeline companies' interests which they have raised in other proceedings.[10] Refusal to permit their

[9]In FERC's brief in FERC v. McNamara, No. 79-1403, (5th Cir. 1979), the following statement was made at page 13:

> Insofar as it requires the purchaser to bear, and to pass through, if at all, to subsequent purchasers of the gas, the cost of the First Use Tax, Section 47:1303(C) trenches upon the Commission's exclusive authority to determine whether the purchaser or seller of natural gas should bear certain costs (including taxes) associated with the transportation or sale of natural gas in interstate or foreign commerce, and whether, when the costs (including taxes) are incurred as a result of processing to extract natural gas liquids, those costs must be recovered, if at all, in the sales prices for the natural gas liquids products extracted.

[10]*See* note 2, *supra*.

intervention will prevent the pipeline companies from participating in the resolution of those issues, and from litigating additional constitutional issues particularly affecting their interests. *See, e.g.*, discussion at pp. 19-21, *infra.*

The practical impairment of the ability of the pipeline companies to protect their interests, absent their participation in this case, and the critical need to permit them to speak for themselves, is best illustrated by examining the nature of the relief sought by plaintiffs. If this Court were, for example, to consider granting preliminary injunctive relief, it should permit the pipeline companies to assist the Court in fashioning any such relief because of the enormous sums involved and the severe adverse impact the pipeline companies could suffer if such relief were granted without their participation.

Until declared unconstitutional, the First Use Tax is a valid item of cost which must be included in a pipeline company's cost-of-service. Should a preliminary injunction be issued, the State of Louisiana would be prohibited from collecting the tax currently from the pipeline companies and, under the terms of the FERC orders, the pipeline companies would be prohibited from collecting from their customers amounts sufficient to pay the tax currently.[11]

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[11]In Order No. 10, FERC made the following statement:

> Should the collection of the tax be enjoined by the courts during the entire period the validity of the tax is pending in court, no collection of such amounts by pipelines in their jurisdictional rates would be permitted by this Commission until such time as the tax is found to be lawful by a final and nonappealable court order. In that event, the pipelines shall keep account of their contingent tax liability during the pendency of court review. Appropriate rate relief will

[footnote continued on next page]

If the preliminary injunction were later dissolved because this Court determines that the First Use Tax is in whole or in part constitutional, the pipeline companies will be obligated to pay the First Use Tax to the State of Louisiana retroactively from the effective date of the injunction. This payment would require coordination of payments of the tax to the State of Louisiana with the collection of rates from the customers of the pipeline companies in order to avoid enormous financing charges incurred as a result of the necessity to borrow funds sufficient to discharge the pipeline companies' obligation to the State of Louisiana. Not only might the absence of the necessary coordination subject some pipeline companies to financial strain, but the heavy financing costs incurred to borrow funds to make the lump sum payment would necessitate additional increases to their rates.

The pipeline companies could thus be exposed to a potentially enormous, immediate liability for the accrued unpaid taxes, as well as the possibility of interest, penalties, costs and attorneys fees,[12] and should be in a position to participate in the framing of any injunctive relief.

These practical considerations demonstrate the substantial proprietary and other interests of the pipeline companies which may be adversely affected unless they are permitted to intervene.

[footnote continued from previous page]

be granted if the tax is ultimately held to be valid and constitutional.

State of Louisiana First Use Tax in Pipeline Rate Cases, FERC Docket No. RM78-23, Order No. 10, at 2, 43 Fed. Reg. 45553 (Oct. 3, 1978). Although FERC has represented that it will grant "appropriate rate relief," the nature and timing of this relief has not been specified.

[12] *See* page 12, *supra.*

III. Intervention by Pipeline Companies is Necessary in Order that Their Interests be Adequately Represented

The pipeline companies' interests are not adequately represented by plaintiffs. As stated in *Trbovich v. United Mine Workers of America,* 404 U.S. 528, 538, n. 10 (1972), intervention should be allowed:

> if the applicant shows that representation of his interest "may be" inadequate; and the burden of making that showing should be treated as minimal. See 3B J. ¶ 24.09-1[4] (1969).

Accord Hodgson v. United Mine Workers of America, 473 F.2d 118, 130 (D.C. Cir. 1972). In *Trbovich*, an intervention by members of a union was allowed in a suit instituted by the Secretary of Labor. The Court recognized that the Secretary was under a statutory obligation to represent the interests of the union members but also acknowledged that the Secretary's additional and broader duty to the public was distinct from the interests of the complaining union members, and on this basis recognized the right of the complaining union members to intervene.

The pipeline companies represent additional, distinct and in certain respects broader interests than do plaintiffs. Certain aspects of the First Use Tax affect particularly the interests of the taxpaying pipeline companies. The "nullification clause" contained in the First Use Tax, La. R.S. 47:1303C, which seeks to abrogate pre-existing contractual relationships between the pipeline companies and their suppliers, directly affects the rights of only the pipeline companies under the contracts. In contrast, the plaintiffs' concern with that clause is based on the effect of the proposed abrogation upon the rates which they and their citizens are charged for the gas by certain of the pipeline companies.

It is the pipeline companies, as taxpayers, who are denied equal protection of the laws as a result of the combined effect of the First Use Tax and the Severance Tax Credit Act, La. R.S. 47:647.[13] This differs from the interest of the plaintiffs which are concerned with the economic effect of these combined provisions upon the pipeline companies' rates to their customers.

Certainly, the pipeline companies can be expected to represent their own distinct economic interests (*See, e.g.*, discussion at pp. 16-18, *supra*) more vigorously than the plaintiffs. *New York Public Interest Research Group, Inc. v. Regents of the University of the State of New York*, 516 F.2d 350 (2d Cir. 1975). *See also Holmes v. Government of the Virgin Islands*, 61 F.R.D. 3 (D. St. Croix 1973).

If in *Trbovich* the interests of an intervenor were held by this Court to be not adequately represented by a party who, while admittedly representing the same interests, also represented additional and different interests, the pipeline companies here have certainly met the "minimal" showing that representation of their interests may be inadequate. Since the interests of the pipeline companies are broader than and only partly coincident with those of plaintiffs, intervention should be allowed.

Moreover, the plaintiffs' attack on the First Use Tax is aimed at the application of the tax to natural gas passing through Louisiana in transit to other states. Plaintiff's Brief In Support Of Motion For Leave To File Complaint, at 19–20. In contrast, the pipeline companies contend that the First Use Tax also is unconstitutional as applied to gas transported from the offshore and onshore federal domains and sold and consumed in Louisiana. The pipeline companies strongly urge that the First Use Tax is

[13]The text of the Severance Tax Credit Act is contained in Appendix B, *infra*, pages A-3—A-5.

unconstitutional *in toto*, and that none of the "uses" to which it applies is taxable, whether or not the gas ever leaves Louisiana.

There is no doubt that gas transported from the offshore and onshore federal domains into Louisiana is being transported in interstate commerce even though it is sold in Louisiana. *California v. Lo-Vaca Gathering Co.*, 379 U.S. 366, 369 (1965). Moreover, as to gas sold in Louisiana, the impact of the First Use Tax would not and could not be limited to Louisiana because much of the gas sold in Louisiana thereafter is transported in interstate commerce to other states. Also, the tax paid on gas sold and consumed in Louisiana in most instances becomes a part of total systemwide gas cost to be borne by all customers of each taxpaying pipeline company, whether such customer is located in Louisiana or some other state. Thus, even when the gas never leaves Louisiana, the First Use Tax adversely impacts and discriminates against interstate commerce.

Finally, while the pipeline companies believe that this case can be and should be disposed of summarily, the court may conclude that full factual development is needed. If it does so, it is submitted that the pipeline companies have a superior ability to marshal the facts which may be required to be shown in order to demonstrate that the tax is unconstitutional. *See, e.g. complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977). When a party to the action does not have access to relevant facts available to an intervenor, that party may be unable to represent the intervenor adequately. *National Farm Lines v. Interstate Commerce Commission*, 564 F.2d 381 (10th Cir. 1977); *Atlantic Refining Co. v. Standard Oil Co.*, 304 F.2d 387 (D.C. Cir. 1962); *General Motors Corp.*

v. Burns, 50 F.R.D. 401 (D. Hawaii 1970). More specifically, the pipeline companies have full knowledge of, direct access to, and intimate familiarity with the gas supply, engineering, economic, accounting and environmental data which the court may determine is necessary for determinations relating to the constitutionality of the First Use Tax as a taxing measure.

The pipeline companies respectfully submit that their presence will not retard, but rather will promote, the progress of the litigation, since they will aid in the complete presentation, particularly of the issues and in the proper and expeditious resolution of the controversy. *See United States v. Reserve Mining Co.,* 56 F.R.D. 408 (D. Minn. 1972). The facts which the Court may conclude are pertinent including the volume and source of the gas taxed, its transmission, its "use" and its destination—are in the possession of the pipeline companies. The practical operation and economic effect of the tax cannot be evaluated in the absence of the pipeline companies. Intervention should be permitted when the "parties seeking intervention will significantly contribute to full development of the underlying factual issues of the case." *Spangler v. Pasadena City Bd of Ed.,* 552 F.2d 1326, 1329 (9th Cir. 1977), *citing Hines v. Rapides Parish School Bd,* 479 F.2d 762, 765 (5th Cir. 1973).

IV. This Court's Decisions Support Granting Intervention

This Court has granted intervention in actions between states where the intervenor claimed a distinct interest that would be affected by the action. *See, e.g., Oklahoma v. Texas,* 252 U.S. 372 (1920) (intervention by United States); *Oklahoma v. Texas,* 258 U.S. 574 (1922) (intervention by private parties); *Texas v. New Jersey,* 379

U.S. 674 (1965) (intervention by a state); *Texas v. Louisiana*, 426 U.S. 465 (1976) (intervention by a city).

In *Utah v. United States*, 394 U.S. 89 (1969), a private party was denied leave to intervene, but only because a stipulation had been entered between the original parties that limited the issues before this Court to such an extent that the intervenor's only remaining interest in the case was identical to that of an existing party. This Court noted, however, that absent the stipulation, the intervention "would have had a substantial basis" and that it would have seemed "fairest" to permit the intervenor "to speak for itself." 394 U.S. at 92.

The pipeline companies have demonstrated that they have significantly protectable interests that will be impaired by an adverse decision in this action and that their interests are not adequately represented by any of the existing parties. This is exactly the type of situation contemplated by this Court in *Utah*. As in that case, here also it would be "fairest" to permit the intervening parties to speak for themselves regarding their paramount interests.

CONCLUSION

It is respectfully submitted that the Motion for Leave to Intervene should be granted and that the pipeline companies should be allowed to file their complaint.

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and Trunkline Gas Company

COMPLAINT OF INTERVENORS

Columbia Gas Transmission Corporation, Consolidated Gas Supply Corporation, El Paso Natural Gas Company, Florida Gas Transmission Company, Michigan Wisconsin Pipe Line Company, Mississippi River Transmission Corporation, Natural Gas Pipeline Company of America, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, Sea Robin Pipeline Company, Southern Natural Gas Company, Tennessee Gas Pipeline Company (a Division of Tenneco Inc.), Texas Eastern Transmission Corporation, Texas Gas Transmission Corporation, Transcontinental Gas Pipe Line Corporation, Trunkline Gas Company, and United Gas Pipe Line Company (hereinafter "Intervenors"), complain and allege as follows:

JURISDICTION AND STANDING

1. Intervenors seek leave to file this Complaint in Intervention pursuant to article III, § 2, clauses 1 and 2 of the Constitution of the United States ("Controversies . . . between a State and Citizens of another State"); Rule 9 of this Court; and Rule 24 of the Federal Rules of Civil Procedure.

2. The original complaint filed herein by plaintiffs seeks a declaratory judgment, pursuant to 28 U.S.C. 2201–02, that the State of Louisiana's First Use Tax on Natural Gas, La. R.S. 47:1301–07 [hereinafter "First Use Tax"] (the text of the First Use Tax is contained in Appendix C, *infra,* pages A-6—A-12), violates the rights and

protections afforded to plaintiffs by the United States Constitution under article I, § 8, clause 3 (Commerce Clause); article I, § 10, clause 1 (Impairment of Contracts Clause) and clause 2 (Import-Export Clause); and article VI, clause 2 (Supremacy Clause); and denies to plaintiffs the equal protection of the laws guaranteed by the Fourteenth Amendment. The complaint also seeks preliminary and permanent injunctions against the enforcement and collection of the First Use Tax, and an order that all revenues collected pursuant thereto be refunded to the taxpayers together with interest thereon.

3. The activities and operations of each Intervenor make it liable for the taxes imposed by the First Use Tax statute. Intervenors have a significant and direct interest in the outcome of this lawsuit and intervene as plaintiffs seeking a declaration of invalidity and unconstitutionality of the First Use Tax for the reasons set forth herein.

4. Each Intervenor is a "natural gas company" as defined in Section 2 of the Natural Gas Act, 15 U.S.C. 717 *et seq.*, and is regulated by the Federal Energy Regulatory Commission [hereinafter "FERC"].

5. The First Use Tax statute purports to impose a tax "upon the first occurrence within this state of any use . . . of any natural gas upon which no severance tax or tax upon the volume of production has been paid, or is legally due to be paid, to this state or any other state or territory of the United States, or which is not subject to the levy of any import tax or tariff by the United States as an import from a foreign country." La. R.S. 47:1303A.

6. Each Intervenor acquires natural gas produced from the Outer Continental Shelf (a federal domain beyond the territorial boundaries of the State of Louisiana, which is defined and delineated in the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*) and from onshore federal enclaves lying within the boundaries of the State of Louisiana, upon which no severance tax or tax upon the volume of production has been paid, or is legally due to be paid, to Louisiana or to any other state or territory of the United States, and upon which no import tax or tariff is imposed by the United States [hereinafter "said gas"].

7. Each Intervenor transports said gas through its own pipeline system or has said gas transported through the pipeline systems of others into or through the State of Louisiana, in various streams in interstate commerce, for sale for resale under rate schedules or tariffs approved by and on file with FERC to gas distribution companies, municipalities, and other pipelines, and/or for direct sale to other customers, all under certificates of public convenience and necessity issued by FERC. With some variation from stream to stream, said gas while traveling in interstate commerce is subjected to some or all of the purported uses set out in the First Use Tax statute.

8. During the months of April, May and June 1979, each Intervenor was the "owner" of said gas at the time of the first occurrence within Louisiana of an event defined as a "use" by La. R.S. 47:1302(8), and each Intervenor therefore was required to report the tax imposed upon said gas by the First Use Tax statute and rules and regulations promulgated pursuant thereto.

9. The First Use Tax statute requires that each Intervenor file statements with the Louisiana Department of Revenue and Taxation each month following any month in which a "first use" occurs and that the First Use Taxes purportedly due on volumes of gas reported in said statements be paid monthly. La. R.S. 47:1305. Each Intervenor properly reported and, pursuant to La. R.S. 47:1576, paid under protest the full amount of the First Use Tax purportedly due for the months of April, May and June 1979, on gas owned by each of them. (The text of La. R.S. 47:1576 is contained in Appendix D, *infra,* pages A-13—A-14.) Each Intervenor will own gas which will be subjected to a "first use" in months subsequent to June 1979, and will pay under protest the amount of First Use Tax purportedly due for each such month.

10. Each Intervenor timely instituted suit against Shirley McNamara, Secretary of the Louisiana Department of Revenue and Taxation, the Louisiana Department of Revenue and Taxation, and the State of Louisiana, in the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, No. 225-533, Division "D," to recover First Use Taxes paid under protest for the month of April 1979, and to recover all First Use Tax payments for succeeding months, imposed pursuant to La. R.S. 47:1301 *et seq.*, and paid by each Intervenor under protest pursuant to La. R.S. 47:1576.

DESCRIPTION OF THE PARTIES

11. Each of the following Intervenors is a corporation duly authorized to do business and actually doing business

in the State of Louisiana, being incorporated under the laws of, and having its principal place of business in, the state shown beneath its respective name:

Southern Natural Gas Company
State in which incorporated: Delaware
Principal place of business: 1st National Southern Natural Building, Birmingham, Alabama 35203

Transcontinental Gas Pipe Line Corporation
State in which incorporated: Delaware
Principal place of business: 2700 S. Post Oak Road, Houston, Texas 77056

Columbia Gas Transmission Corporation
State in which incorporated: Delaware
Principal place of business: 1700 MacCorkle Avenue, Charleston, West Virginia 25314

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
State in which incorporated: Delaware
Principal place of business: 1010 Milam Street, Houston, Texas 77001

Texas Eastern Transmission Corporation
State in which incorporated: Delaware
Principal place of business: 1 Houston Center, Houston, Texas 77002

Florida Gas Transmission Company
State in which incorporated: Delaware
Principal place of business: 1560 Orange Avenue, Winter Park, Florida 32790

Michigan Wisconsin Pipe Line Company
State in which incorporated: Delaware
Principal place of business: One Woodward Avenue, Detroit, Michigan 48226

Natural Gas Pipeline Company of America

State in which incorporated:	Delaware
Principal place of business:	122 S. Michigan Avenue Chicago, Illinois 60603

Texas Gas Transmission Corporation

State in which incorporated:	Delaware
Principal place of business:	3800 Frederica Street, Owensboro, Kentucky 42301

Trunkline Gas Company

State in which incorporated:	Delaware
Principal place of business:	3000 Bissonnet Avenue, Houston, Texas 77005

United Gas Pipe Line Company

State in which incorporated:	Delaware
Principal place of business:	700 Milam Street, Houston, Texas 77002

Consolidated Gas Supply Corporation

State in which incorporated:	West Virginia
Principal place of business:	445 W. Main Street, Clarksburg, West Virginia 26301

El Paso Natural Gas Company

State in which incorporated:	Delaware
Principal place of business:	Texas at Stanton, El Paso, Texas 79978

Northern Natural Gas Company

State in which incorporated:	Delaware
Principal place of business:	2223 Dodge Street, Omaha, Nebraska 68102

Mississippi River Transmission Corporation

State in which incorporated:	Delaware
Principal place of business:	9900 Clayton Road, St. Louis, Missouri 63124

Intervenor Panhandle Eastern Pipe Line Company is a corporation organized and existing under the laws of the State of Delaware having its principal places of business at 3000 Bissonnet Avenue, Houston, Texas 77005 and at 3444 Broadway, Kansas City, Missouri. It is not authorized to transact business in the State of Louisiana and in fact does not transact business in that State.

Intervenor Sea Robin Pipeline Company is an unincorporated joint venture between United Offshore Company and Southern Deepwater Pipeline Company. United Offshore Company is a Delaware corporation having its principal place of business in Houston, Texas; and Southern Deepwater Pipeline Company is a Delaware corporation having its principal place of business in Birmingham, Alabama.

12. The defendant is the sovereign State of Louisiana, with its capitol located in Baton Rouge, Louisiana.

DESCRIPTION OF FIRST USE TAX

13. Without in any way agreeing with the stated purposes, applicability, validity or constitutionality of the First Use Tax statute, all of which are denied, Intervenors state the following:

14. Despite assertions in the First Use Tax statute that the incidence of the tax "shall not be upon the natural gas nor upon the property or rights from which it is produced, but rather shall be only upon the privilege of performance or allowing the performance, by the owner, of the enumerated actions comprising first use within the

state," La. R.S. 47:1303E, the tax in reality and in economic effect is imposed upon the natural gas itself as it is transported in interstate commerce, or alternatively, upon the privilege of transporting the gas in interstate commerce.

15. The First Use Tax statute provides that the tax is "deemed a cost associated with uses made by the owner in preparation of marketing of the natural gas," La. R.S. 47:1303C, and is made payable "by the owner or owners of the natural gas stream at the time any use ... first occurs within the state." La. R.S. 47:1305B. The term "owner" is defined as the person "having title to and the right to alienate the natural gas subject to the tax at any time a use occurs in the state." La. R.S. 47:1302(9). The statute expressly excludes "any person to whom temporary possession or control has been transferred" from the definition of "owner." La. R.S. 47:1302(9). Despite its denomination and description as a "First Use Tax," the tax is *not* imposed upon or made payable by a user of the gas *qua* user. Thus, the owner is liable for payment of the tax even though another entity may actually subject the gas to a "use" and derive the economic benefit of that "use." Furthermore, the statute expressly states that any contract providing that the owner shall have a "right to reimbursement or refund of such taxes from any other party in interest, other than a purchaser of such natural gas, is ... declared to be against public policy and unenforceable to that extent." La. R.S. 47:1303C.

16. The rate and measure of the tax is determined by the total volume of gas which is transported in interstate commerce, rather than by the volume of gas which is used or consumed within Louisiana. La. R.S. 47:1303B.

17. If the tax is not paid, the natural gas itself is deemed to be contraband and is subject to seizure and sale as such. La. R.S. 47:1306B.

18. The "use" upon which the tax is imposed is defined to include "the sale; the transportation in the state to the point of delivery at the inlet of any processing plant; the transportation in the state of unprocessed natural gas to the point of delivery at the inlet of any measurement or storage facility; transfer of possession or relinquishment of control at a delivery point in the state; processing for the extraction of liquefiable component products or waste materials; use in manufacturing; treatment; or other ascertainable action at a point within the state." La. R.S. 47:1302(8). Nevertheless, because of exclusions contained in the statute and credits contained in related statutes, the First Use Tax is tailored so as to affect only interstate businesses and so that its ultimate cost will be borne by consumers residing in states other than Louisiana who purchase such natural gas.

19. All amounts of gas which are used or consumed in the drilling for or production of oil, natural gas, sulfur, or in the processing of natural gas for liquids extraction within the state are exempt. La. R.S. 47:1303A. Gas shrinkage volume attributable to the extraction of ethane, propane, butanes, natural or casinghead gasoline or other liquefied hydrocarbons are exempt, provided shrinkage

volumes do not exceed equivalent gas volumes of the extracted liquids. La. R.S. 47:1303A. All amounts of natural gas which are used or consumed in the manufacture of fertilizer or anhydrous ammonia within the state are exempt. La. R.S. 47:1303A.

20. Furthermore, in conjunction with the Severance Tax Credit, La. R.S. 47:647, and the Tax Credit to Operators of Electric Generating Plants and Natural Gas Distribution Services, La. R.S. 47:11, the First Use Tax exempts Louisiana producers and consumers of affected natural gas, who are otherwise "owners" or "purchasers" and subject to the cost of the tax, from the burden of payment of the tax or of increased costs of gas as a result of the tax. (The text of La. R.S. 47:647 is contained in Appendix B, *infra,* pages A-3—A-5, and the text of La. R.S. 47:11 is contained in Appendix A, *infra,* pages A-1—A-2.) The First named act gives credits against severance tax liability to Louisiana producers in the exact dollar amount of payments by such producers as a result of the First Use Tax, while the second grants credits against other state taxes to all Louisiana consumers in the exact amount of increased costs attributable to the First Use Tax.

21. The purported purpose of the First Use Tax is "the exaction of fair and reasonable compensation to the citizens of this state for the costs incurred and paid with public funds, which costs inure solely to the benefit of the owners of natural gas produced beyond the boundaries of Louisiana, although introduced into the state, and to provide some measure of reimbursement to the citizens for damages to the state's waterbottoms, barrier reefs, and sensitive shorelands as a direct consequence of activity

within the state associated with such natural gas by the owners thereof." La. R.S. 47:1301C. The tax is allegedly imposed because "the imposition of a tax upon the severance of [oil and natural gas] from the soil and water of the state fail to prevent the economic waste of these Louisiana natural resources and will unfairly tax Louisiana producers in a discriminatory fashion, unless the state equally and uniformly taxes the introduction for the first time into the economy of the state natural gas which has not been otherwise or elsewhere subject to taxation by or within the United States." La. R.S. 47:1301A.

22. The First Use Tax statute provides that if any "use" as defined in the statute and "first occurring" is determined not to be a constitutionally taxable incident, "the tax shall be imposed upon the use first occurring thereafter." La. R.S. 47:1303F. Accordingly, if the first "use" to which the gas is subjected in any one stream is found to be unconstitutionally taxed and the next "use first occurring thereafter" to the gas as it flows through the pipeline is also found to be unconstitutionally taxed, Intervenors aver that any subsequent "use" occurring to the gas in that stream is beyond the reach of the statute and is not taxable.

23. Intervenors assert that all "uses" contemplated by La. R.S. 47:1302(8) occur at some point in the transportation of gas owned by Intervenors in interstate commerce into or through the State of Louisiana and that none of such "uses" outlined in the statute can be constitutionally taxed, all for the following reasons:

INVALIDITY OF THE FIRST USE TAX

24. The First Use Tax statute, sometimes in conjunction with other Louisiana statutes, unfairly discriminates against interstate commerce in violation of the Commerce Clause, article 1, § 8 of the United States Constitution, for the following reasons, among others:

(a) The First Use Tax statute discriminates against owners of natural gas on v hich no severance tax or tax on the volume of production has been paid, which is produced in or outside the boundaries of the State of Louisiana and which is moving in interstate commerce, by subjecting such gas to the First Use Tax, even though such gas undergoes the same uses within the State of Louisiana as does gas upon which a severance tax or tax on the volume of production has been paid, which is produced in or outside the state and which therefore is not subject to the First Use Tax.

(b) The First Use Tax statute exempts gas used or consumed in Louisiana for certain purposes or by certain taxpayers from liability for the tax, but denies these exemptions to other owners of gas or to gas transported through the State and used or consumed for similar purposes in other states, as described in paragraph 19 hereof.

(c) The First Use Tax statute, in conjunction with credit provisions contained in other Louisiana statutes referred to in paragraph 20 hereof,

confers discriminatory tax advantages to owners of oil and gas produced within the boundaries of the State of Louisiana who also own gas subject to the First Use Tax, and discriminates against owners of gas subject to the First Use Tax who do not also own oil or gas produced within the boundaries of Louisiana or who do not have sufficient production within Louisiana to receive the same tax advantages.

(d) The First Use Tax statute, in conjunction with other Louisiana statutes referred to in paragraph 20 hereof, provides consumers and distributors of gas situated in Louisiana with a credit in the amount of increased costs attributable to the First Use Tax, against liability for other state taxes in the exact amount of such increased cost, thereby discriminating against consumers and distributors similarly situated in other states. Therefore, Petitioners' out of state customers will ultimately bear the burden of the First Use Tax, whereas consumers and distributors similarly situated in Louisiana will not.

25. The First Use Tax statute unfairly burdens interstate commerce, is not fairly apportioned, tends to create multiple burdens on interstate commerce, is not based upon a sufficient nexus between Louisiana and the property or activity sought to be taxed to justify its imposition, and is not fairly related to any cost or burden imposed upon Louisiana by the interstate commerce subject to the tax or to the value of any services or benefits

provided by the State to such interstate commerce, in violation of the Commerce Clause, article 1, § 8 of the United States Constitution, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution for the following reasons, among others:

(a) The effect of the First Use Tax is to tax the gas itself as it moves in interstate commerce or, alternatively, to tax the privilege of transporting the gas in interstate commerce, rather than to tax the use of such gas, because the tax is imposed upon the owner of the gas rather than the person subjecting the gas to a "use" *qua* user, because the gas itself is subject to forfeiture for noncompliance with the statute, and because the tax is an unapportioned levy on the entire volume of gas transported in interstate commerce (with certain specified exemptions, La. R.S. 47:1303A).

(b) The First Use Tax statute creates the risk of correlative taxation by other states resulting in multiple tax burdens on natural gas destined for consumption at the end of its interstate journey beyond the State of Louisiana because the tax is imposed on "uses" which are an integral part of the transportation of the gas in interstate commerce, some or all of which recur in every state through which the gas is transported, and because the tax is an unapportioned levy on the entire volume of gas transported in interstate commerce (with the specified exemptions). The threat of such multiple burdens discriminates

against the owners of interstate gas upon which no severance tax or tax upon the volume of production has been paid and which is transported beyond the State of Louisiana and discriminates in favor of the owners of interstate and intrastate gas consumed within Louisiana.

(c) The amount of the First Use Tax is not fairly related to the alleged adverse impacts upon or benefits derived from the State of Louisiana as a result of the facilities or activities of each Intervenor within the State of Louisiana.

(d) Neither the incidence nor the amount of the First Use Tax is fairly related to the expressed purposes of the statute: that is, compensating the citizens of Louisiana for the alleged damages to the coastal areas of Louisiana and preventing the physical and economic waste of Louisiana's natural resources.

(e) Some Intervenors receive natural gas from onshore federal enclaves located within the boundaries of the State of Louisiana. Because no severance tax or tax upon the volume of production has been paid on such gas, it purportedly is subject to the First Use Tax, even though the imposition of the tax on this gas is not related to the expressed purposes of the statute.

(f) The rate of the First Use Tax is the same as the rate of the severance tax on gas produced within Louisiana, but the impact, if any, resulting from

any first "use" as defined in the statute within the State of Louisiana is wholly disproportionate to the impact resulting from severance.

(g) The impact of the First Use Tax is unrelated to (1) the activities of Intervenors in the State, (2) any possible adverse impact of such activities on the State, or (3) the benefits and services provided by the State, for all of which Intervenors pay other taxes, and/or for which the State of Louisiana has already been and will continue to be fully compensated pursuant to the Coastal Zone Management Act, 16 U.S.C. 1456(a).

(h) Neither the events giving rise to the application of the First Use Tax nor the natural gas subject to the tax have sufficient nexus with the State of Louisiana to justify imposition of the tax. The temporary presence, sale, exchange, transfer of possession or control, or transportation of the gas within Louisiana is not a sufficient nexus to justify imposition of a tax measured by the total volume of the gas moving through the State.

26. The First Use Tax statute directly violates the Impairment of Contract Clause of the United States Constitution, article I, § 10, clause 1, because La. R.S. 47:1303C declares invalid and unenforceable provisions in contracts which some Intervenors have with persons other than purchasers of gas subject to the tax which provide for reimbursement of the tax to those Intervenors. The First Use Tax statute should thus be declared null and void.

27. The First Use Tax statute deprives each Intervenor of the equal protection of the laws guaranteed under the Fourteenth Amendment of the Constitution of the United States because it falls unequally on similarly situated taxpayers and similar uses, for the following reasons, among others:

(a) Whereas the First Use Tax is directed entirely against natural gas pipelines, asserted damages to Louisiana's coastal areas, if any, result from many other types of activity by entities which receive the same services and benefits from the State of Louisiana as do the pipelines, none of which is burdened by the First Use Tax or any analogous tax.

(b) The First Use Tax statute discriminates in favor of owners of gas that is subjected to a first "use" in Louisiana as defined in the statute and on which a severance tax has been paid, and discriminates against owners of gas that is subjected to a first "use" in Louisiana as defined in the statute but on which a severance tax has *not* been paid. Nevertheless, whether a severance tax has or has not been paid bears no relation to the impact resulting from any first "use" within Louisiana.

28. The First Use Tax statute is in conflict with and repugnant to federal statutes and is accordingly void under the Supremacy Clause, article 6 of the United States Constitution, for the following reasons, among others:

(a) Section 4 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1333, provides that "state taxation laws shall not apply" to the Outer Continental Shelf. Notwithstanding the label given to it in the statute, the First Use Tax is, in economic effect, a severance tax on gas produced from the Outer Continental Shelf.

(b) The First Use Tax statute is in effect an attempt to regulate the transportation and/or sale of natural gas that is dedicated to interstate commerce by contracts and/or FERC certificates of public convenience and necessity pursuant to the Natural Gas Act, 15 U.S.C. 717 *et seq.* The sale and/or transportation of natural gas in interstate commerce is a matter within the exclusive jurisdiction of the Department of Energy and the Federal Energy Regulatory Commission and is beyond the reach of the State of Louisiana or any other state.

(c) The First Use Tax statute conflicts with and is repugnant to federal statutes, including the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, the Natural Gas Act, 15 U.S.C. 717 *et seq.*, and the Natural Gas Policy Act of 1978, Pub. L. No. 95-521 (1978), which constitute a comprehensive, exclusive and preemptive federal regulatory scheme duly adopted by Congress for the regulation, *inter alia*, of the sale and transportation of natural gas in interstate commerce.

29. To the extent that the First Use Tax statute imposes a tax on gas produced from federal enclaves within the State of Louisiana, the Statute violates article 1, § 8, clause 17 of the United States Constitution.

30. In the event the First Use Tax statute imposes a tax on gas imported into Louisiana from a foreign country on which the United States does not now levy any import tax or tariff (19 U.S.C. 1202, Schedule 4, Item 475.15), the statute violates the Import-Export Clause of the United States Constitution, article 1, § 10, clause 2, and the Commerce Clause, article 1, § 8 of the United States Constitution.

31. The First Use Tax statute is ambiguous and vague and violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution in that it does not describe the activities upon which the tax is imposed with sufficient certainty. For example, the statute defines "use" as, among other things, "other ascertainable action at a point within the state." La. R.S. 1302(8).

WHEREFORE, Intervenors respectfully pray that, after due proceedings, this Court declare and adjudge, pursuant to 28 U.S.C. 2201, that the Louisiana First Use Tax is unconstitutional and void as being contrary to the Constitution and Laws of the United States.

Each Intervenor further prays that Defendant be taxed for costs; and that the Court grant to each Intervenor such other and further relief as is just and appropriate in the circumstances of this case.

By their attorneys,

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Panhandle Eastern Pipe Line
Company, Tennessee Gas Pipeline
Company, a Division of Tenneco
Inc., Texas Eastern Transmission Corporation
and Trunkline Gas Company

CERTIFICATE OF SERVICE

I, Daniel F. Collins, a member of the Bar of this Court, do hereby certify that three (3) copies of each of the foregoing motion and complaint were served upon each other party separately represented in this proceeding by depositing said copies in the United States mail, properly addressed, with airmail postage prepaid, pursuant to Rule 33 of the Rules of this Court, this 24th day of August, 1979.

_____

Daniel F. Collins

ENTRY OF APPEARANCES

I, Gene W. Lafitte, hereby certify that I am a member of the Bar of this Court, and that I represent Florida Gas Transmission Company and Southern Natural Gas Company, which are seeking leave to intervene in the action entitled "State of Maryland, State of Illinois, State of Indiana, Commonwealth of Massachusetts, State of Michigan, State of New York, State of Rhode Island and Providence Plantations, and State of Wisconsin v. State of Louisiana," No. 83, Original on the docket of this Court. It is respectfully requested that the Clerk of the Court for the United States Supreme Court enter my name as Counsel of Record for Florida Gas Transmission Company and Southern Natural Gas Company in the above entitled action.

/s/ Gene W. Lafitte

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I, C. McVea Oliver, hereby certify that I am a member of the Bar of this Court, and that I represent Transcontinental Gas Pipe Line Corporation, which is seeking leave to intervene in the action entitled "State of Maryland, State of Illinois, State of Indiana, Commonwealth of Massachusetts, State of Michigan, State of New York, State of Rhode Island and Providence Plantations, and State of Wisconsin v. State of Louisiana," No. 83, Original on the docket of this Court. It is respectfully requested that the Clerk of Court for the United States Supreme Court enter my name as Counsel of Record for Transcontinental Gas Pipe Line Corporation in the above entitled action.

/s/ C. McVea Oliver

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I, Ernest L. Edwards, hereby certify that I am a member of the Bar of this Court, and that I represent United Gas Pipe Line Company and Sea Robin Pipeline Company, which are seeking leave to intervene in the action entitled "State of Maryland, State of Illinois, State of Indiana, Commonwealth of Massachusetts, State of Michigan, State of New York, State of Rhode Island and Providence Plantations, and State of Wisconsin v. State of Louisiana," No. 83, Original on the docket of this Court. It is respectfully requested that the Clerk of the Court for the United States Supreme Court enter my name as Counsel of Record for United Gas Pipe Line Company and Sea Robin Pipeline Company in the above entitled action.

/s/ Ernest L. Edwards

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I, Arthur J. Waechter, Jr., hereby certify that I am a member of the Bar of this Court, and that I represent Texas Gas Transmission Corporation, which is seeking leave to intervene in the action entitled "State of Maryland, State of Illinois, State of Indiana, Commonwealth of Massachusetts, State of Michigan, State of New York, State of Rhode Island and Providence Plantations, and State of Wisconsin v. State of Louisiana," No. 83, Original on the docket of this Court. It is respectfully requested that the Clerk of the Court for the United States Supreme Court enter my name as Counsel of Record for Texas Gas Transmission Corporation in the above entitled action.

/s/ Arthur J. Waechter, Jr.

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I, Herschel L. Abbott, Jr., hereby certify that I am a member of the Bar of this Court, and that I represent Texas Gas Transmission Corporation, which is seeking leave to intervene in the action entitled "State of Maryland, State of Illinois, State of Indiana, Commonwealth of Massachusetts, State of Michigan, State of New York, State of Rhode Island and Providence Plantations, and State of Wisconsin v. State of Louisiana," No. 83, Original on the docket of this Court. It is respectfully requested that the Clerk of the Court for the United States Supreme Court enter my name as Counsel of Record for

Texas Gas Transmission Corporation in the above entitled action.

/s/ Herschel L. Abbott, Jr.

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I, Burt W. Sperry, hereby certify that I am a member of the Bar of this Court, and that I represent Michigan Wisconsin Pipe Line Company and Mississippi River Transmission Corporation, which are seeking leave to intervene in the action entitled "State of Maryland, State of Illinois, State of Indiana, Commonwealth of Massachusetts, State of Michigan, State of New York, State of Rhode Island and Providence Plantations, and State of Wisconsin v. State of Louisiana," No. 83, Original on the docket of this Court. It is respectfully requested that the Clerk of the Court for the United States Supreme Court enter my name as Counsel of Record for Michigan Wisconsin Pipe Line Company and Mississippi River Transmission Corporation in the above entitled action.

/s/ Burt W. Sperry

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I, Daniel F. Collins, hereby certify that I am a member of the Bar of this Court, and that I represent Michigan Wisconsin Pipe Line Company, which is seeking leave to intervene in the action entitled "State of Maryland, State of Illinois, State of Indiana, Commonwealth of Massachusetts, State of Michigan, State of New York, State of Rhode Island and Providence Plantations, and State of Wisconsin v. State of Louisiana," No. 83, Original on the docket of this Court. It is respectfully requested that the Clerk of the Court for the United States Supreme Court enter my name as Counsel of Record for Michigan Wisconsin Pipe Line Company in the above entitled action.

/s/ Daniel F. Collins

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I, Frank J. Peragine, hereby certify that I am a member of the Bar of this Court, and that I represent Columbia Gas Transmission Corporation, Consolidated Gas Supply Corporation, El Paso Natural Gas Company, Natural Gas Pipeline Company of America, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Texas Eastern Transmission Corporation and Trunkline Gas Company which are seeking leave to intervene in the action entitled "State of Maryland, State of Illinois, State of Indiana, Commonwealth of Mas-

sachusetts, State of Michigan, State of New York, State of Rhode Island and Providence Plantations, and State of Wisconsin v. State of Louisiana," No. 83, Original on the docket of this Court. It is respectfully requested that the Clerk of the Court for the United States Supreme Court enter my name as Counsel of Record for Columbia Gas Transmission Corporation, Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Texas Eastern Transmission Corporation, Trunkline Gas Company, Natural Gas Pipeline Company of America, Consolidated Gas Supply Corporation, El Paso Natural Gas Company, Northern Natural Gas Company and Panhandle Eastern Pipe Line Company, in the above entitled action.

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APPENDICES

APPENDIX A

La. R.S. 47:11. Tax Credit for Electric and Natural Gas Service

A. Recognizing that the state of Louisiana must depend upon natural gas produced in the federal domain of the outer continental shelf as a supplement to its declining domestic supply, and recognizing that this natural gas is regulated exclusively by agencies of the federal government and is therefore outside of the regulatory jurisdiction of the state of Louisiana, and that the necessarily higher transportation and marketing costs for such natural gas results in higher fuel costs for utilities and industries within the state dependent thereon, the following tax credits, being deemed fair and in the best interest of the state, are hereby authorized.

B. Every electric generating plant and natural gas distribution service municipally owned or regulated, or regulated by the Louisiana Public Service Commission and every direct purchase of natural gas from the owner of the natural gas, other than an owner of natural gas regulated by a municipality or the state, for consumption only by such purchaser, shall be allowed a direct tax credit against any tax or combination of taxes, other than severance taxes, owed to the state, upon showing that fuel costs for electricity generation or natural gas distribution or consumption have increased as a direct result of increases in transportation and marketing costs of natural gas delivered from the federal domain of the outer continental shelf and upon which such entities are dependent for a portion of their supply. Increased transportation and marketing costs shall not include increases in wellhead prices or increases attributable to inflation factors. In the event that the increase in fuel costs exceeds the tax or combination of taxes owed to the state, every such electric generating plant, natural gas distribution service or other affected purchaser shall be issued

tax warrants in amounts not to exceed in the aggregate the difference between the increase in the fuel costs and the tax or taxes owed to the state, which tax warrants may be used in the payment of any tax or combination of taxes owed to any parish, municipality, political subdivision or other taxing authority of the state. Tax credits and warrants shall be issued annually hereunder and shall not exceed two million dollars in the aggregate. No electric generating plant, natural gas distribution service, or other affected purchaser shall be issued tax credits or warrants totaling less than two hundred fifty dollars annually, except that increased costs totaling less than the minimum credit established herein may be carried forward and accumulated for three years from the year in which the increased costs occur in order that the applicant may utilize the tax credit authorized herein prior to the end of the prescriptive period otherwise set forth in this Title. In the event that total increased fuel costs exceed two million dollars in the aggregate, the Secretary of the Department of Revenue and Taxation shall issue tax credits and warrants based on a formula to be fixed by regulation which shall insure each qualifying applicant a proportionate share of the maximum tax credits established herein.

C. The secretary of the Department of Revenue and Taxation shall promulgate rules providing for the determination of the amount of any tax credit or tax warrant provided for herein and for administration of the provisions of this Section.

D. The state shall have a right of recovery of tax credits granted pursuant to this Section in the event that increased transportation and marketing costs for which credits are granted hereunder are reimbursed or refunded for any reason to any entity receiving the credit.

APPENDIX B

La. R.S. 47:647. Severance Tax Credit

A. Every taxpayer liable for and remitting taxes levied and collected pursuant to R.S. 47:1301 through 1307 and each taxpayer who bears such taxes as a direct result of contractual terms or agreements applied in disregard of R.S. 47:1303C, shall be allowed a direct tax credit, at any time following payment of such tax, not in excess of the amount which must be borne by such taxpayer, against severance taxes owed by such taxpayer to the state, the amount of which credit shall not exceed the amount of severance taxes for which such taxpayer is liable to the state as a direct consequence of the privilege of severing natural resources from the surface of the soil or water of the state. A taxpayer who bears any portion of the tax levied pursuant to R.S. 47:1301 through 1307 as a direct result of contractual terms or agreements applied in disregard of R.S. 47:1303C, shall be entitled to a credit under this Section only after there has been a determination by the Louisiana Supreme Court or the appropriate United States District Court that such taxpayer must bear the tax, provided that if the taxpayer or the state has sought and been denied a preliminary injunction enjoining the application of such contractual terms or agreements sought to be rendered inapplicable by R.S. 47:1303(C), then such taxpayer shall be entitled to a credit under this Section from the date of denial of the preliminary injunction.

B. No tax credit pursuant to this Section shall be allowed for any taxes remitted pursuant to R.S. 47:1301 through 1307 for which a taxpayer has an enforceable right to reimbursement from a third party. A taxpayer claiming any credit under this Section shall furnish to the secretary of the Department of Revenue and Taxation all applicable contracts and other information requested by

the secretary, which relate to such taxpayer's possible right to reimbursement. If the secretary determines that the taxpayer has an enforceable right to reimbursement, which the taxpayer is not actually receiving, the secretary shall so rule. Within thirty days of receipt of notice of such ruling the taxpayer shall have the right to appeal such ruling to the Louisiana Board of Tax Appeals which board shall determine in open meeting whether there is sufficient evidence to support the ruling of the secretary. If the board determines that there is not sufficient evidence it shall overrule the secretary and the taxpayer shall not be required to take any other action in order to receive the tax credit provided by this Section. If the board determines that there is sufficient evidence, the taxpayer shall thereafter have a period of ninety days within which to institute any administrative or judicial proceedings necessary to assert such right to reimbursement. The taxpayer shall pursue such administrative or judicial proceedings with due diligence. At all times prior to commencement of such administrative or judicial proceedings and during the pendency thereof, and during any appeals therefrom, the taxpayer shall continue to be entitled to the credit provided in this Section; provided that if no action is taken by the taxpayer to assert the right to reimbursement within ninety days no further credit shall be granted and the state shall have the right to recover from the taxpayer any credits granted prior to the expiration of such time. If it is determined in any administrative proceedings that a taxpayer has no right to such reimbursement, then the taxpayer shall not be entitled to continue receiving the credit allowed by this Section, unless the taxpayer within the time allowed by applicable law seeks judicial review of such administrative determination and pursues such judicial review to a final

and unappealable judgment. If the administrative or judicial determination establishes that the taxpayer has an enforceable right to reimbursement of the taxes levied pursuant to R.S. 47:1301 through 1307, and if the taxpayer is so reimbursed, then such taxpayer shall be liable to the state for additional severance taxes equivalent to the amount of taxes levied under R.S. 47:1301 through 1307 for which such taxpayer has received reimbursement. The taxpayer shall also pay to the state interest on such taxes at the rate prescribed in R.S. 47:1601, accruing from the date on which the credit attributable to such taxes was taken to the date of final payment but only to the extent of any interest which the taxpayer has itself received on the amount of reimbursement.

C. The credit allowed by this Section shall not affect the percentage allocation of severance tax proceeds otherwise due to any parish, and the secretary of the Department of Revenue and Taxation, with the concurrence of the state treasurer shall, by regulation, establish such procedures as may be deemed necessary to provide therefor.

D. The secretary of the Department of Revenue and Taxation shall promulgate rules and regulations necessary for the implementation and administration of the tax credit provided for herein.

APPENDIX C

La. R.S. 47:1301-07. First
Use Tax on Natural Gas

§ 1301. State policy

A. The conservation of natural resources is of vital concern to the present and future welfare of our state and nation, and it is the policy of the state of Louisiana, in the exercise of its police and taxing power, to prevent the physical and economic waste of its natural resources. It is recognized that other existing laws providing limitations upon the production of oil and gas are allowed within the state, and the imposition of a tax upon the severance of these natural resources from the soil and water of the state fail to prevent the economic waste of these Louisiana natural resources and will unfairly tax Louisiana producers in a discriminatory fashion, unless the state equally and uniformly taxes the introduction for the first time into the economy of the state natural gas which has not been otherwise or elsewhere subject to taxation by or within the United States.

B. The waterbottoms, barrier islands and coastal areas within the state are also valuable natural resources, as they provide essential habitat for many forms of wildlife and aquatic life in Louisiana, help protect our coastline from erosion, and are of aesthetic, commercial and recreational value to the citizens of our state and nation. It is further recognized that while other existing laws, applicable to the production of oil and natural gas, provide recompense in the form of taxes to the people of the state of Louisiana for adverse effects on the natural resources, barrier islands, waterbottoms, and shorelands of this state, these laws fail to provide protection for such valuable natural resources or compensation to the people of Louisiana for the necessary adverse effects caused by

entry for use for the first time in Louisiana, under the protection of the state's laws, of natural gas which has not been subject to taxation otherwise or elsewhere by or within the United States unless the state levies an equitable tax thereon.

C. It is one of the express purposes of this tax to require the exaction of fair and reasonable compensation to the citizens of this state for the costs incurred and paid with public funds, which costs enure solely to the benefit of the owners of natural gas produced beyond the boundaries of Louisiana, although introduced into the state, and to provide some measure of reimbursement to the citizens for damages to the state's waterbottoms, barrier reefs, and sensitive shorelands as a direct consequence of activity within the state associated with such natural gas by the owners thereof.

§ 1302. Definitions

The definitions hereinafter set forth shall have the meanings ascribed to them unless the context of use clearly indicates otherwise:

(1) "Oil, condensate, distillate or similar hydrocarbons" are liquid hydrocarbons remaining in a liquid state at 15.025 pounds per square inch absolute and sixty degrees Fahrenheit.

(2) "Natural gas" is natural or casinghead gaseous phase hydrocarbons remaining after separation from either oil, condensate, or distillate and measured at a pressure base of 15.025 pounds per square inch absolute at a temperature base of sixty degrees Fahrenheit.

(3) "Processing" is the scrubbing of a natural gas stream by specifically applied mechanical processes of

absorption, adsorption, compression, cooling, cryogenics, refrigeration or any combination thereof for the purpose of extracting natural or casinghead gasoline, methane, ethane, propane, butane and other liquefiable hydrocarbons.

(4) "Refining" is the process by which crude oil, distillate and condensate are separated or fractionated into the various component parts or purified.

(5) "Storage" means and includes any keeping or retention in this state of oil and natural gas.

(6) "Measurement" is any process by which the volume of natural gas affected by this Part is determined.

(7) "Sale" is the transfer of ownership of and title to natural gas from one person to another for valuable consideration.

(8) "Use" is: the sale; the transportation in the state to the point of delivery at the inlet of any processing plant; the transportation in the state of unprocessed natural gas to the point of delivery at the inlet of any measurement or storage facility; transfer of possession or relinquishment of control at a delivery point in the state; processing for the extraction of liquefiable component products or waste materials; use in manufacturing; treatment; or other ascertainable action at a point within the state.

(9) "Owner" is the person or person having title to and the right to alienate the natural gas subject to the tax at the time a use occurs in the state. It shall not include any person to whom temporary possession or control has been transferred. In the event of a sale the purchaser shall be deemed the owner.

§ 1303. Imposition; exclusion; commingling

A. Pursuant to the exercise of the police and taxing powers of the state for the purpose of preventing economic and physical waste of our natural resources and for protecting and providing compensation for adverse effects upon the state's shorelands, waterbottoms and barrier islands, there is hereby levied and imposed a tax upon the first occurrence within this state of any use, as defined in this Part, of any natural gas upon which no severance tax or tax upon the volume of production has been paid, or is legally due to be paid, to this state or any other state or territory of the United States, or which is not subject to the levy of any import tax or tariff by the United States as an import from a foreign country. The tax levied herein shall not apply to natural gas otherwise subject thereto when such gas is used or consumed in the drilling for or production of oil, natural gas, sulphur, or in the processing of natural gas for liquids extraction within the state; nor shall it apply to gas shrinkage volumes attributable to the extraction of ethane, propane, butanes, natural or casinghead gasoline or other liquefied hydrocarbons, provided shrinkage volumes shall not exceed equivalent gas volumes of the extracted liquids computed by recognized conversion factors used by the Gas Processors Association nor shall it apply to natural gas used or consumed in the manufacture of fertilizer and anhydrous ammonia within the state.

B. The tax imposed by Subsection A of this Section shall be computed at a rate of seven cents on each unit of natural gas as to which a use first occurs within the state. For the purposes of this tax a unit shall be one thousand cubic feet of natural gas as measured at a pressure base of 15.025 pounds per square inch absolute and at a temperature base of sixty degrees Fahrenheit.

C. In furtherance of the public policy and purpose set forth in Section 1301 of this part, and particularly Subsection C of said Section, this tax shall be deemed a cost associated with uses made by the owner in preparation of marketing of the natural gas. Any agreement or contract by which an owner of natural gas at the time a taxable use first occurs claims a right to reimbursement or refund of such taxes from any other party in interest, other than a purchaser of such natural gas, is hereby declared to be against public policy and unenforceable to that extent. Notwithstanding any such agreement or contract, such an owner shall not have an enforceable right to any reimbursement or refund on the basis that this tax constitutes a cost incurred by such owner by virtue of the separation or processing of natural gas for extraction of liquid or liquefiable hydrocarbons, or that this tax constitutes any other grounds for reimbursement or refund under such agreement or contract, unless there has been a final and unappealable judicial determination that such owner is entitled to such reimbursement or refund, notwithstanding the public policy and purpose of this part and the foregoing provisions of this Subsection C. In any legal action pursuant to this Subsection, the state shall be an indispensable party in interest.

D. When natural gas subject to the tax levied in this Part is commingled with oil and/or natural gas not subject to the tax levied herein, it shall be presumed that the volumes withdrawn from the commingled mass by the first use shall be in the same ratio as the ratio of the resources entering the commingled mass.

E. Nothing in this Part shall be construed as imposing any tax on the production, severance, or ownership of natural gas produced outside of the

boundaries of the state of Louisiana, it being the intention of this Part that the incidence of this tax shall not be upon the natural gas nor upon the property or rights from which it is produced, but rather shall be only upon the privilege of performance or allowing the performance, by the owner, of the enumerated actions comprising first use within the state.

F. If any use as defined in this Part and first occurring is determined not to be a constitutionally taxable incident, the tax shall be imposed upon the use first occurring thereafter.

§ 1304. Authority of the collector of revenue to promulgate rules and regulations

The collector of revenue is authorized to promulgate rules and regulations necessary to effect the intent and purpose of this Part, including regulations concerning the measurement of products associated with the incidents taxed herein.

§ 1305. Reports and payments; reimbursement limitations

A. The owner or owners of the natural gas at the time a use first occurs in this state shall file with the Department of Revenue and Taxation on or before the last day of each month following the month of first use, statements on forms procured from the department, showing the volumes, values, owners and such other information as the department may require by law or regulation for computing and assessing the amount of tax due under this Part.

B. The taxes levied by this Part shall be due and payable to the Department of Revenue and Taxation monthly on or before the last day of the month following

the month to which the tax is applicable by the owner or owners of the natural gas stream at the time any use, as defined herein, first occurs within the state.

§ 1306. Delinquent tax; failure to report or pay

A. The tax provided by this Part shall become delinquent after the date fixed for each monthly report to be filed in the office of the collector, and from such time shall be subject to the addition of interest, penalties, and costs as provided in Chapter 18, Subtitle II of this Title.

B. The failure to report or pay, within ninety days, in the manner and at the time required herein, the tax imposed by this Part on the first use of natural gas is unlawful, and the natural gas shall be deemed illegal gas subject to the provisions of R.S. 30:19 and, as such, shall be treated as contraband and shall be seized and sold as provided by R.S. 30:20.

§ 1307. Disposition of collections

The secretary shall remit all collections of taxes provided by this Part each month to the state treasurer, not later than the tenth day of the month following the month in which collections are made. The state treasurer shall credit all such collections to the state treasury.

APPENDIX D

La. R.S. 47:1576. Remittance of Tax Under Protests; Remedy At Law For Recovery And Interest On Amounts Recovered

A. A right of action is hereby created to afford a remedy at law for any person aggrieved by the prohibition of courts restraining the collection of tax, penalty, interest, or other charges imposed in this Subtitle. The person resisting the payment of any amount found due by the collector, or of enforcement of any provisions of this Subtitle, shall remit the amount found due to the collector and at that time shall give the collector notice of his intention to file suit for the recovery thereof. Upon receipt of this notice, the amount remitted shall be placed in an escrow account and held by the collector or his duly authorized representatives for a period of thirty days. If suit is filed within the thirty-day period for the recovery of such amount, the funds in the escrow account shall be further held pending the outcome of the suit. If the person prevails, the collector shall refund the amount to the claimant, with interest at the rate of six percent per annum covering the period from the date the funds were received by the collector to the date of refund.

B. This Section shall afford a legal remedy and right of action in any state or federal court having jurisdiction of the parties and subject matter, for a full and complete adjudication of any and all questions arising in the enforcement of this Subtitle as to the legality of any tax accrued or accruing or the method of enforcement thereof. In such action, service of process upon the collector shall be sufficient service, and he shall be the sole necessary and proper party defendant in any such suit.

C. This Section shall be construed to provide a legal remedy in the state or federal courts, by action at law, in case such taxes are claimed to be an unlawful burden upon interstate commerce, or the collection thereof, in violation of any Act of Congress or the United States Constitution, or the Constitution of the state of Louisiana, or in any case where jurisdiction is vested in any of the courts of the United States.

D. Upon request of a person and proper showing by such person that the principal of law involved in an additional assessment is already pending before the courts for judicial determination, such person, upon agreement to abide by the decision of the courts, may remit the additional assessment under protest, but need not file an additional suit. In such cases the tax so paid under protest shall be placed in an escrow account and held by the collector until the question of law involved has been determined by the courts and shall then be disposed of as therein provided.

APPENDIX E

Federal Rules of Civil Procedure
Rule 24. Intervention

(a) **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) **Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) **Procedure.** A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same

procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action to which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28, U.S.C., § 2403.

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